

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **ROBERT J. RAUSCHER, M.D.**

4 Holder of License No. 13109
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-14-1007A

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR LETTER
OF REPRIMAND AND PROBATION**

7 The Arizona Medical Board ("Board") considered this matter at its public meeting on
8 June 2, 2016. Robert J. Rauscher, M.D. ("Respondent"), appeared with legal counsel
9 Stephen W. Myers, Esq., before the Board for a Formal Interview pursuant to the authority
10 vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue Findings of Fact,
11 Conclusions of Law and Order after due consideration of the facts and law applicable to
12 this matter.

13 **FINDINGS OF FACT**

14 1. The Board is the duly constituted authority for the regulation and control of
15 the practice of allopathic medicine in the State of Arizona.

16 2. Respondent is the holder of license number 13109 for the practice of
17 allopathic medicine in the State of Arizona.

18 3. The Board initiated case number MD-14-1007A after receiving complaints
19 alleging that Respondent had an active substance abuse problem and had been recently
20 arrested for an extreme DUI that had not been timely reported to the Board.

21 4. Hospital records obtained by Board staff confirmed substance abuse
22 treatment.

23 5. The aforementioned information was presented to the investigative staff, the
24 medical consultant and the lead Board member. All reviewed the information and
25 concurred that Respondent should enter into an Interim Consent Agreement to restrict

1 Respondent's practice. The Interim Consent Agreement ("ICA") for Practice Restriction
2 was executed on July 23, 2014.

3 6. On August 12, 2014, Board staff was contacted by a pharmacist who
4 reported that Respondent wrote a prescription for a patient despite the restriction on his
5 practice pursuant to the July 23, 2014 ICA. The prescription was written for 20 tablets of
6 Seroquel (100mg). Respondent subsequently admitted that he had written the prescription
7 using his name and signature as the prescriber for a patient with the intent to divert the
8 medication to himself.

9 7. Respondent subsequently underwent an assessment with the Board's
10 Physician Health Program ("PHP") Contractor, who opined that Respondent was unsafe to
11 practice and recommended inpatient treatment.

12 8. Respondent completed inpatient treatment and was discharged with staff
13 approval on October 4, 2014.

14 9. Respondent met with the PHP Contractor on October 8, 2014 for a post-
15 treatment assessment. Based on a review of the information, it was recommended that
16 Respondent enter into the Board's PHP under the dependence track for a period of 5
17 years with an additional requirement of psychiatric monitoring.

18 10. Respondent entered into an ICA for PHP participation, effective December 3,
19 2014, and the ICA for Practice Restriction was terminated.

20 11. Respondent was arrested by Scottsdale City Police in May, 2014 and
21 charged with Driving Under the Influence ("DUI"). On November 12, 2014, Respondent
22 subsequently pled guilty to a DUI with a BAC of .08 or more. Respondent failed to report
23 either the initial charge or subsequent plea agreement to the Board within 10 days as
24 required by statute.

1 12. During a Formal Interview on this matter, Respondent denied that he saw
2 patients while impaired and denied that he drank alcohol while he was working.
3 Respondent also testified that he voluntarily stopped working in May of 2014 after he
4 developed a medical condition that hindered his ability to practice safely. During that time,
5 he also experienced personal family issues and began consuming alcohol as a coping
6 mechanism resulting in alcohol dependency. With regard to the Seroquel prescription,
7 Respondent admitted that he used poor judgment in an effort to save money.

8 13. During that same Formal Interview, the Board's PHP Contractor testified that
9 Respondent was in compliance with the PHP program and that the status of his recovery
10 was solid.

11 CONCLUSIONS OF LAW

12 1. The Board possesses jurisdiction over the subject matter hereof and over
13 Respondent.

14 2. The conduct and circumstances described above constitute unprofessional
15 conduct pursuant to A.R.S. § 32-1401(27)(f) ("Habitual intemperance in the use of alcohol
16 or habitual substance abuse.").

17 3. The conduct and circumstances described above constitute unprofessional
18 conduct pursuant to A.R.S. § 32-1401(27)(q) ("Any conduct or practice that is or might be
19 harmful or dangerous to the health of the patient or the public.")

20 4. The conduct and circumstances described above constitute unprofessional
21 conduct pursuant to A.R.S. § 32-1401(27)(r) ("Violating a formal order, probation, consent
22 agreement or stipulation issued or entered into by the board or its executive director under
23 the provisions of this chapter.").

24 5. The conduct and circumstances described above constitute unprofessional
25 conduct pursuant to A.R.S. § 32-1401(27)(s) ("Violating or attempting to violate, directly or

1 indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of
2 this chapter.”) Specifically, Respondent violated A.R.S. § 32-3208(A) (“A health
3 professional who has been charged with a misdemeanor involving conduct that may affect
4 patient safety or a felony after receiving or renewing a license or certificate must notify the
5 health professional’s regulatory board in writing within ten working days after the charge is
6 filed.”).

7 **ORDER**

8 IT IS HEREBY ORDERED THAT:

9 1. Respondent is issued a Letter of Reprimand.

10 2. Respondent’s license is placed on Probation for **five years¹** and is subject to
11 his continued participation in the Board’s Physician Health Program (“PHP”) and
12 compliance with the following terms and conditions:

13 3. Respondent shall not consume alcohol or any food or other substance
14 containing poppy seeds or alcohol. Respondent shall not take any illegal drugs or mood
15 altering medications.

16 4. Respondent shall attend the PHP’s relapse prevention group therapy
17 sessions one time per week for the duration of this Order, unless excused by the relapse
18 prevention group facilitator for good cause. Individual relapse therapy may be substituted
19 for one or more of the group therapy sessions, if PHP pre-approves substitution. The
20 relapse prevention group facilitators or individual relapse prevention therapist shall submit
21 monthly reports to the PHP regarding attendance and progress.

22 5. If requested by the PHP, Respondent shall attend ninety 12-step meetings or
23 other self-help group meetings appropriate for substance abuse and approved by the PHP,
24

25 ¹ Respondent’s PHP participation shall be retroactive to December 3, 2014.

1 for a period of ninety days. Upon completion of the ninety meetings in ninety days,
2 Respondent shall participate in a 12-step recovery program or other self-help program
3 appropriate for substance abuse as recommended by the PHP. Respondent shall attend a
4 minimum of three 12-step or other self-help program meetings per week. Two meetings
5 per month must be Caduceus meetings. Respondent must maintain a log of all self-help
6 meetings.

7 6. Respondent shall promptly obtain a primary care physician and shall submit
8 the name of the physician to the PHP in writing for approval. The approved primary care
9 physician ("PCP") shall be in charge of providing and coordinating Respondent's medical
10 care and treatment. Except in an Emergency, Respondent shall obtain medical care and
11 treatment only from the PCP and from health care providers to whom the PCP refers
12 Respondent. Respondent shall promptly provide a copy of this Order to the PCP.
13 Respondent shall also inform all other health care providers who provide medical care or
14 treatment that Respondent is participating in PHP. "Emergency" means a serious accident
15 or sudden illness that, if not treated immediately, may result in a long-term medical
16 problem or loss of life.

17 7. All prescriptions for controlled substances shall be approved by the PHP
18 prior to being filled except in an Emergency. Controlled substances prescribed and filled
19 in an emergency shall be reported to the PHP within 48 hours. Respondent shall take no
20 Medication unless the PCP or other health care provider to whom the PCP refers
21 Respondent prescribes and the PHP approves the Medication. Respondent shall not self-
22 prescribe any Medication. "Medication" means a prescription-only drug, controlled
23 substance, and over-the counter preparation, other than plain aspirin, plain ibuprofen, and
24 plain acetaminophen. Respondent shall submit to random biological fluid, hair and nail
25

1 testing for five years from the date of this Interim Consent Agreement (as specifically
2 directed below) to ensure compliance with PHP.

3 8. Respondent shall provide the PHP in writing with one telephone number that
4 shall be used to contact Respondent on a 24 hour per day/seven day per week basis to
5 submit to biological fluid, hair and nail testing to ensure compliance with PHP. For the
6 purposes of this section, telephonic notice shall be deemed given at the time a message to
7 appear is left at the contact telephone number provided by Respondent. Respondent
8 authorizes any person or organization conducting tests on the collected samples to
9 provide testing results to the PHP. Respondent shall comply with all requirements for
10 biological fluid, hair and nail collection. Respondent shall pay for all costs for the testing.

11 9. Respondent shall provide the PHP with written notice of any plans to travel
12 out of state.

13 10. Respondent shall immediately notify the Board and the PHP in writing of any
14 change in office or home addresses and telephone numbers.

15 11. Respondent provides full consent for the PHP to discuss the Respondent's
16 case with the Respondent's PCP or any other health care providers to ensure compliance
17 with PHP.

18 12. The relationship between the Respondent and the PHP is a direct
19 relationship. Respondent shall not use an attorney or other intermediary to communicate
20 with the PHP on participation and compliance issues.

21 13. Respondent shall be responsible for all costs, including PHP costs
22 associated with participating in PHP at the time service is rendered, or within 30 days of
23 each invoice sent to the Respondent. An initial deposit of two months PHP fees is due
24 upon entering the program. Failure to pay either the initial PHP deposit or monthly fees 60
25

1 days after invoicing will be reported to the Board by the PHP and may result in disciplinary
2 action up to and including revocation.

3 14. Respondent shall immediately provide a copy of this Order to all employers,
4 hospitals and free standing surgery centers where Respondent currently has or in the
5 future gains employment or privileges. Within 30 days of the date of this Order,
6 Respondent shall provide the PHP with a signed statement of compliance with this
7 notification requirement. Respondent is further required to notify, in writing, all employers,
8 hospitals and free standing surgery centers where Respondent currently has or in the
9 future gains employment or privileges, of a chemical dependency relapse or a violation of
10 this Order.

11 15. In the event Respondent resides or practices as a physician in a state other
12 than Arizona, Respondent shall participate in the rehabilitation program sponsored by that
13 state's medical licensing authority or medical society. Respondent shall cause the
14 monitoring state's program to provide written quarterly reports to the PHP regarding
15 Respondent's attendance, participation, and monitoring. The monitoring state's program
16 and Respondent shall immediately notify the PHP if Respondent: a) is non-compliant with
17 any aspect of the monitoring requirements; b) relapses; c) tests positive for controlled
18 substances; d) has low specific gravity urine drug test(s), missed and/or late urine drug
19 tests, or otherwise rejected urine drug tests; and e) is required to undergo any additional
20 treatment.

21 16. The PHP shall immediately notify the Board if Respondent is non-compliant
22 with any aspect of the monitoring requirements or this Order.

23 17. In the event of chemical dependency relapse by Respondent or
24 Respondent's use of controlled substances or alcohol in violation of this Order,
25 Respondent shall promptly enter into an Interim Consent Agreement for Practice

1 Restriction that requires, among other things, that Respondent not practice medicine until
2 such time as Respondent successfully completes long-term inpatient treatment for
3 chemical dependency designated by the PHP and obtains affirmative approval from the
4 Executive Director, in consultation with the Lead Board Member and Chief Medical
5 Consultant, to return to the practice of medicine. Prior to approving Respondent's request
6 to return to the practice of medicine, Respondent may be required to undergo any
7 combination of physical examination, psychiatric or psychological evaluation. In no respect
8 shall the terms of this paragraph restrict the Board's authority to initiate and take
9 disciplinary action for violation of this Order.

10 18. Respondent shall obey all federal, state and local laws, and all rules
11 governing the practice of medicine in the State of Arizona.

12 19. Respondent shall appear in person before the Board and/or its staff and PHP
13 for interviews upon request, with reasonable notice.

14 20. Respondent shall establish a relationship with a Board-approved psychiatrist
15 for treatment as needed. At the initiation of treatment, Respondent shall authorize the
16 psychiatrist to confirm in writing to the PHP that they have read the inpatient treatment
17 Program's evaluation, and that they agree to summarize results of their therapy and to
18 report back to the PHP. Respondent shall instruct the treating psychiatrist to submit written
19 reports to the PHP regarding Respondent's care and treatment on a quarterly basis.
20 Respondent shall pay the expenses of treatment and is responsible for paying for the
21 preparation of the quarterly reports. Respondent shall authorize the psychiatrist to
22 communicate with the PHP regarding Respondent's compliance with treatment, and if at
23 any time the psychiatrist finds evidence that Respondent is a safety threat to patients.

1 21. This Order supersedes all previous consent agreements and stipulations
2 between the Board and/or the Executive Director and Respondent and is the final
3 resolution of this matter.

4 22. Prior to the termination of Probation, Respondent must submit a written
5 request to the Board for release from the terms of this Order. Respondent's request for
6 release will be placed on the next pending Board agenda, provided a complete submission
7 is received by Board staff no less than 14 days prior to the Board meeting. Respondent's
8 request for release must provide the Board with evidence establishing that he has
9 successfully satisfied all of the terms and conditions of this Order. The Board has the sole
10 discretion to determine whether all of the terms and conditions of this Order have been
11 met or whether to take any other action that is consistent with its statutory and regulatory
12 authority.

13 23. The Board retains jurisdiction and may initiate new action based upon any
14 violation of this Order.

15 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

16 Respondent is hereby notified that he has the right to petition for a rehearing or
17 review. The petition for rehearing or review must be filed with the Board's Executive
18 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The
19 petition for rehearing or review must set forth legally sufficient reasons for granting a
20 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after
21 date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed,
22 the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

23 Respondent is further notified that the filing of a motion for rehearing or review is
24 required to preserve any rights of appeal to the Superior Court.

25 DATED AND EFFECTIVE this 5th day of August, 2016.

ARIZONA MEDICAL BOARD

1
2 By Patricia E. McSorley
3 Patricia E. McSorley
4 Executive Director

5 EXECUTED COPY of the foregoing mailed
6 this 5th day of August, 2016 to:

7 Stephen W. Myers, Esq.
8 Myers & Jenkins, PC
9 714 E Rose Lane, Suite 100
10 Phoenix, AZ 85014
11 Attorney for Respondent

12 ORIGINAL of the foregoing filed
13 this 5th day of August, 2016 with:

14 Arizona Medical Board
15 9545 E. Doubletree Ranch Road
16 Scottsdale, AZ 85258

17 Mary Baker
18 Board Staff
19
20
21
22
23
24
25